

Chorley and South Ribble

Communities Directorate

ENFORCEMENT AND PROSECUTION POLICY

Updated - 1 October 2024

Summary of proposed changes

change	Implementation date	Justification
Amalgamated Chorley & South Ribble enforcement policies to form a single enforcement policy.	1st October	By having a single enforcement policy for both Councils, we reduce duplication of effort.
Referenced Communities Directive covering both Chorley & South Ribble Councils throughout the document replacing The Early Intervention and Support Directorate	1 October 2024	To provide an overarching enforcement policy detailing the approach to enforcement by the Communities Directorate.
Provided various enforcement option in paragraph 2.3	1 October 2024	Graduated approach to enforcement, but with freedom to take immediate prosecution where blatant breaches identified
Referenced that we will follow RIAMS procedures which are continuously updated having regard to national guidance.	1 October 2024	Enables council to follow nationally recognised procedures when enforcing a wide variety of different legislation. (para 6.2)
Referenced that this is an overarching policy and that there may be a need for subject specific enforcement and these will be added and amended as appendices to this document	1 October 2024	Enables Council to link the general enforcement approach to subject specific enforcement requirements.

1. INTRODUCTION

- 1.1 The Communities Directorate covering both Chorley and South Ribble Council's will be referenced as the Communities Directorate throughout the rest of this document. It is the aim of the Communities Directorate to protect and promote health, safety and welfare and enhance the quality of life of all residents, workers and visitors to the Borough. It will achieve much of this through education, by providing advice and by regulating the activities of others. Securing compliance with legal regulatory requirements, using enforcement powers including prosecution, is an important part of achieving this aim.
- 1.2 The functions covered are extensive. They include litter control and other waste enforcement, licensing, food safety, pollution and noise control, health and safety, infectious disease control, housing standards, empty properties, pest control, animal welfare, anti-social behaviour, dangerous dogs, allotments homelessness and welfare rights, this is not an exhaustive list.
- 1.3 Communities Directorate will work with Central Government and other regulators on matters such as food safety, air pollution, waste management and contaminated land and health and safety to ensure coherent regulation. They may also work with other local authorities, many voluntary groups and non-governmental organisations in order to achieve common goals.
- 1.4 Communities Directorate regard prevention as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy or excessive cost. It encourages individuals and business to put safety first and to integrate good working practices into normal working methods.
- 1.5 This Policy sets out the general principles which the Communities Directorate intends to follow in relation to enforcement and prosecution. The Policy will be reviewed as and where required by national guidance.

2. PURPOSE AND APPROACH TO ENFORCEMENT

- 2.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the public or to secure compliance with a regulatory system. The need for enforcement may stem from a failure to comply with statutory obligations. Enforcement action will not constitute a punitive response to minor technical contraventions of legislation but be based on risk to health, safety or the environment and other factors such as a record of previous compliance. Although all teams within the Communities Directorate expects full compliance with relevant legislative requirements and will not hesitate to use its enforcement powers where such action is necessary and proportionate.
- 2.2 The Communities Directorate will have regard to Central Governments Regulators' Compliance Code when developing policies or principles or in setting standards or giving guidance. This Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, the Third Sector and other regulated entities.
- 2.3 Where teams within the Communities Directorate enforce legislation we will seek to educate, engage and enforce in this order, they will assess and consider all the evidence available including past history, the severity of the incident being investigated and apply a graduated approach to our decision making. Both Councils will always choose an enforcement method that is relevant and proportionate to the offence or contravention. The options available include:

- No action;
- Informal Action and Advice (for example a written warning);
- Fixed Penalty Notices;
- Formal Notice;
- Forfeiture Proceedings;
- Seizure of goods/equipment;
- Injunctive Actions and other Civil Sanctions;
- Refusal / suspension / revocation of a licence or consent;
- Simple Caution;
- Prosecution;
- Restorative Justice;
- Proceeds of Crime Applications.

2.4 Where a criminal offence has been committed, in addition to any other enforcement action, the Communities Directorate will consider instigating prosecution or administering a simple caution. Where the severity of a single incident represents a significant, flagrant or blatant breach of legislation and puts the public at risk the Directorate reserve the option to go straight to prosecution. For every case an assessment will be made of the public interest to such actions when instigating a prosecution.

3. PRINCIPLES OF ENFORCEMENT

3.1 The Communities Directorate operate a policy of firm but fair regulation with the principles of; ***consistency, proportionality and transparency being applied***

3.2 Proportionality

3.2.1 In general, the concept of proportionality is included in much of the regulatory system through the balance of action to protect the employee or the public against risks and costs.

3.2.2 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious environmental damage or pose risks to the health or safety of the public or other groups or individuals. Other breaches or contraventions may interfere with people's enjoyment or rights, or prevent the ability to carry out enforcement activities. The Communities Directorate's first response is to prevent harm from occurring or continuing. The enforcement action taken will be proportionate to the risks posed and to the seriousness of any breach of the law.

3.3 Consistency

3.3.1 Consistency means taking a similar approach in similar circumstances including how we provide advice deal with complaints and use of enforcement powers including when to prosecute

3.3.2 The Communities Directorate recognises that consistency does not mean simple uniformity. Officers need to take account of many variables; the scale of impact, the attitude and actions of management, individuals and the history of previous incidents or breaches. Decisions on enforcement action are a matter of professional judgement, officers authorised to enforce will develop arrangements to promote consistency by liaising with other

enforcing authorities and having regard to national guidance and following procedures documented within RIAMS.

3.4 Transparency

- 3.4.1 Involves helping those regulated and others, to understand what is expected of them and what they should expect from Regulatory Services. It also means making clear why an officer intends to or has taken enforcement action.
- 3.4.2 Transparency is an integral part of the role of the Communities Directorate who will continue to train our staff and develop our procedures to ensure that:
- where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a distinction being made between legal requirements and best practice advice.
 - opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect against an imminent risk to the environment, health or safety or to prevent evidence being destroyed.
 - where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
 - written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

3.5 Targeting

- 3.5.1 Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to or risk of serious risk to the environment, health or safety or where the risks are least well controlled. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.
- 3.5.2 The Communities Directorate have systems for prioritising regulatory effort. They include guidance contained in Codes of Practice, the response to complaints from the public about regulated activities, the assessment of the risks posed by a person's operations and the gathering and acting on intelligence about illegal activities.
- 3.5.3 In the case of regulated business, management actions are important. Repeated incidents or breaches of regulatory requirements may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control and may require a review of the regulatory requirements, the actions of the business operator and additional investment. A relatively low hazard activity poorly managed has potential for greater risk than a higher hazard activity where proper control measures are in place. There are, however, high hazard activities (for example, some major food industries or other industrial processes with the potential to cause significant harm) which will receive regular visits so that The Communities Directorate can be sure that remote risks continue to be effectively managed.

4. PROSECUTION

4.1 Purpose

- 4.1.1 The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.
- 4.1.2 The Early Intervention and Support Directorate recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will require the completion of an appropriate proforma, which must be submitted to Legal Services following sign off by the Head of Service and the Director of Early Intervention and Support and will also take account of the Code for Crown Prosecutors.

4.2 Sufficiency of Evidence

- 4.2.1 A prosecution will not be commenced by the Communities Directorate unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

4.3 Public Interest Factors

- 4.3.1 The Communities Directorate will consider the following factors in deciding whether or not to prosecute:
 - **flagrant breach of the law;**
 - **foreseeability** of the offence or the circumstances leading to it.
 - **intent** of the offender, individually and/or corporately.
 - **history** of offending.
 - **attitude** of the offender.
 - **deterrent effect** of a prosecution, on the offender and others.
 - **personal circumstances** of the offender.
- 4.3.2 The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Communities Directorate will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

4.4 Companies and Individuals

- 4.4.1 Criminal proceedings will be taken against those persons responsible for the offence. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. However, The Communities Directorate will also consider any part played in the offence by the officers of the company, including business proprietors, Directors, Managers and the Company Secretary or employees of the company. Action may also be taken against such officers (as well as the company) where it can be shown that the offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it. In appropriate cases, The Communities Directorate will consider seeking the prohibition of the business proprietor under the specific regulations.

4.5 Choice of Court

- 4.5.1 In cases of sufficient gravity, for example serious breaches of food safety or health and safety, where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 4.4.1 (above) will be used, but including consideration of the sentencing powers of the Magistrates' Court.

4.6 Penalties

- 4.6.1 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the courts. Chorley and South Ribble Council will continue to raise the awareness of the courts to the gravity of many offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain offences are:
- Magistrates' Courts; up to six months imprisonment and/or unlimited fine on summary convictions.
 - Crown Court; up to two years imprisonment and/or an unlimited fine.
- 4.6.2 The Communities Directorate will always seek to recover the costs of investigation and Court proceedings.

4.7 Presumption of Prosecution

- 4.7.1 Where there is sufficient evidence, Communities Directorate will normally prosecute in any of the following circumstances:
- Where the alleged offence involved **a flagrant breach of the law** such that public health, safety or well being is or has been put at risk.
 - Where the alleged offence involves **a failure by the suspected offender to correct an identified serious potential risk** having previously been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
 - Where the offence involves **a failure to comply in full or in part with the requirements of a Statutory Notice**.
 - Where there is **a history of similar offences** related to risk to public health.

- **Obstruction of Regulatory Officers** in carrying out their powers. The Council regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as a serious matter.

5. **ALTERNATIVES TO PROSECUTION**

- 5.1 In cases where a prosecution is not the most appropriate course of action, the alternatives of a simple caution, fixed penalty notice or seizure will be considered, depending on the factors referred to above.
- 5.2 A Simple Caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence.
- 5.3 As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a simple caution.
- 5.4 Fixed penalty notices will be issued in accordance with the relevant legal provision as an alternative to a prosecution in the first instance where:
 - The offence is known to be a first offence
 - The offence is of a minor nature
 - Issue of a fixed penalty notice will have the same deterrent effect as a prosecution.

Fixed penalty notices will only be issued where there is evidence and information to identify an offender sufficient to satisfy the pursuit of any subsequent prosecution.

The issue of fixed penalty notices to children and young people will have regard to any current national government Guidance. Young people age 16 to 17 years inclusive will be treated in the same manner as other adults with regard to the service of fixed penalty notices, although the issue of the fixed penalty notice will be notified to the Youth Offending Team via the Community Safety Partnership.

Young people aged between 10 and 15 years inclusive will be, initially, served with a fixed penalty notice, which will be subject to review following a case meeting between the Council, Youth Offending Team and the Police.

Children below the age of 10 years will not be served with a fixed penalty notice but may be subject to parental contact by a case officer if appropriate.

- 5.5 Community Protection Notices may be issued on individuals aged 16 or above, where a change in behaviour would benefit the wider community and could prevent future offences or anti-social behaviour.

6. **WORKING WITH OTHER REGULATORS**

- 6.1 Where Communities Directorate enforce legislation that another enforcement body both have the power to prosecute, they will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence. For the purposes of health and safety at work enforcement the Unit will liaise with local authorities in the Lead Authority Partnership Scheme (LAPS) where appropriate
- 6.2 Both Chorley and South Ribble Councils work very closely with RH Environmental Limited (RHE) and pay a prescription to access and utilise their RIAMS platform. RIAMS is technically very advanced yet is a simple concept. It delivers regularly

updated UK procedures, documents which are updated in accordance with National guidance. This simplistic approach has helped thousands of environmental health professionals deliver better and more consistent services globally. For subjects covered by RIAMS the Community Directorate will follow RIAMS procedures. .

7. TOPIC RELATED ENFORCEMENT

- 7.1 For some legal topics, for example private sector housing enforcement, national guidance will be produced which the team enforcing against must have regard to. In such circumstances an appendix to this policy will be produced detailing how this specific topic will be enforced having regard to this policy.

Appendix A

Health & Safety Enforcement

Any enforcement decisions (including a decision not to take action) made in relation to Health & Safety should be made utilising the Enforcement Management Model (EMM) issued by the Health & Safety Executive. The current version of the model can be found at: [HSE - The Enforcement Management Model](#)

Where the enforcement decision involves a serious injury or a fatality the outcome of the EMM should be recorded as that decision may be challenged by somebody seeking to take a civil case – this is particularly likely in a case where we have decided not to take enforcement action. The outcome of the EMM will also be required for any case that involves a prosecution.

Appendix B

Housing Enforcement Policy



Housing
Enforcement Policy \



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